

REMARKS

Reconsideration and withdrawal of the restriction requirement are respectfully requested in view of the remarks herein.

The January 10, 2008 Office Action called for restriction from among the following:

- I. Claims 4-6 and 9 (all claims in part), are drawn to compounds of the formula I and their wherein: W is N; A is an alkylene group; R1-R9 are as defined, classified in various subclasses of class 546.
- II. Claims 4-6 and 9 (all claims in part), are drawn to compounds of the formula I and their wherein: W is C-halogen or C-CH₃; A is an alkylene group; R1-R9 are as defined, classified in various subclasses of class 546.
- III. Claims 4-6 and 9 (all claims in part), are drawn to compounds of the formula I and their wherein: W is N; A is an alkylene group wherein of the methylene moieties are replaced with C=O or C=NH; R1-R9 are as defined, classified in various subclasses of class 546.
- IV. Claims 4-6 and 9 (all claims in part), are drawn to compounds of the formula I and their wherein: W is C-halogen or C-CH₃; A is an alkylene group wherein of the methylene moieties are replaced with C=O or C=NH; R1-R9 are as defined, classified in various subclasses of class 546.
- V. Claims 1-3, 7 and 8, drawn to a method of using compounds of formula I, classified in various subclasses of classes 514.
- VI. Claim 10, drawn to a method of preparing compounds of formula I, classified in various subclasses of class 546 and 548.

Applicants elect, with traverse, Group II. Applicants reserve the right to file divisional applications to non-elected subject matter. Reconsideration and withdrawal of the restriction requirement are respectfully requested in view of the remarks herewith.

The January 10, 2008 Office Action also called for an election of species to a single invention by identifying another specific embodiment not listed in the exemplary groups of the invention or a specific compound.

The election of species, made **with traverse**, is as follows: a compound from Group II of formula (I) wherein R1 = CN, R2 = Cl, R3 = CF₃, R4 = CH₃, R5 = CH₂CH₃, R6 = CF₃, A = CH₂CH₂, m = 2, n = 2, and W is C-Cl.

As a traverse, it is noted that the MPEP lists two criteria for a proper restriction requirement. First, the inventions must be independent or distinct. MPEP § 803. Secondly, searching the additional inventions must constitute an undue burden on the examiner if restriction is not required. *Id.* The MPEP directs the Examiner to search and examine an entire application “[i]f the search and examination of an entire application can be made without serious burden, ...even though it includes claims to distinct or independent inventions.” *Id.*

Given that the claims of Group I-IV constitute substantially similar compounds, the same search used for claims of Group I would also be used in the search for claims of Group III. Likewise, the same search used for claims of Group II would also be used in the search for claims of Group IV. Furthermore, all of the Groups are classified in the same class. It is respectfully submitted that it would not place an unnecessary burden on the Examiner to search Groups I and II.

Given that the method of use claims claimed in Group V and the preparation claims claimed in Group VI are drawn to a compound of formula I, it is respectfully submitted that any search for the compounds of formula I in claims of Groups I-IV will certainly encompass references to the methods of the Group V and VI claims. In addition, the Examiner’s assertion that the compounds claimed contain a structural core defined in prior art is indicative of the fact that a search was performed and did not constitute an undue burden on the Examiner.

In summary, restriction has not been shown to be proper, especially since the requisite showing of serious burden has not been made in the Office Action and there are relationships between the claims of all the Groups and between all of the species. Indeed, the search and examination of each Group is likely to be co-extensive and, in any event, would involve such interrelated art that the search and examination of the entire application can be made without undue burden on the Examiner. All of the preceding, therefore, mitigate against restriction.

In view of the above, reconsideration and withdrawal of the Requirement for Restriction are respectfully requested.


CONCLUSION

In view of the remarks herein, reconsideration and withdrawal of the restriction requirement are requested.

Early and favorable consideration of the application on the merits, and early Allowance of the application are earnestly solicited.

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